

DOCUMENT: 15407770

Titles: 1 / Pages: 12



15407770

Fees... * No Fees
Taxes...
Copies...
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RECORD WITHOUT FEE
PURSUANT TO GOV'T CODE § 6103

Recording Requested by:
Office of the City Attorney
City of Santa Clara, California

BRENDA DAVIS
SANTA CLARA COUNTY RECORDER
Recorded at the request of
City

RDE # 010
9/29/2000
3:00 PM

When Recorded, Mail to:

Office of the City Clerk	Department of Toxic Substances Control
City of Santa Clara	Region 2
1500 Warburton Avenue and	700 Heinz Avenue, Suite 200
Santa Clara, CA 95050	Berkeley, CA 94710
	Attn: Barbara J. Cook, P.E., Chief
	Northern California Coastal Cleanup
	Operations Branch

Form per Gov't Code 27361.6

[SPACE ABOVE THIS LINE FOR RECORDER'S USE]

COVENANT TO RESTRICT USE OF PROPERTY

ENVIRONMENTAL RESTRICTION

Capped Portion of
601 El Camino Real
Santa Clara, California 95050
APN 230-06-052 (1999-2000)

ARTICLE I STATEMENT OF FACTS

1.01. The Property, totaling approximately 4.7 acres, is the location of the Santa Clara Police Headquarters, 601 El Camino Real, Santa Clara, California. The Property is at the northwest corner of El Camino Real and Benton Street and is also described as Santa Clara Assessor's Parcel Number 230-06-052 (1999-2000). A general location map (Exhibit "A") is attached and incorporated by this reference.

A limited portion of the Property ("Capped Portion") is composed of two adjacent, rectangular areas (approximately 280' x 100' and 115' x 75') at the west end of the Property. The Capped Portion is more particularly described in Exhibit "B" which is attached and incorporated by this reference.

This Covenant and Agreement ("Covenant") is made by and between the City of Santa Clara, (the "Covenantor"), the current owner of the Property and the Department of Toxic Substances Control (the "Department").

Pursuant to Civil Code section 1471(c), the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials as defined in Health and Safety Code ("H&SC") section 25260. The Covenantor and the Department, collectively referred to as the "Parties", therefore intend that the use of the Property be restricted as set forth in this Covenant, in order to protect human health, safety and the environment.

The Property is a flat, open field bounded on two sides by roadways, one side by a railroad yard, and one side by a flat open field of approximately 4.5 acres located in the County of Santa Clara, State of California. This property is more specifically described as Santa Clara County Assessor's Parcel No: 230-6-20.

1.02. The Covenantor is remediating the Property under the supervision and authority of the Department. The Property is being remediated in accordance with a Removal Action Work Plan pursuant to Chapter 6.8 of Division 20 of the H&SC. Because hazardous substances, as defined in H&SC section 25316, which are also hazardous materials as defined in H&SC Section 25260, are polynuclear aromatic hydrocarbons (PAHs), which remain in the soil under the Capped Portion, the Removal Action Work Plan provided that a deed restriction would be required as part of the site remediation. The Department circulated the Removal Action Work Plan together with a draft negative declaration pursuant to the California Environmental Quality Act, Public Resources Code section 21000 et seq. for public review and comment. The Removal Action Work Plan and the negative declaration were approved by the Department on January 23, 1998. Removal actions include soil excavation, onsite consolidation of impacted soil in areas and at depths that significantly limit the likelihood of its future disturbance in connection with the planned and potential activities at the site, and installation of a 2-foot cap of clean soil to cover the impacted material in the consolidation area. The operation and maintenance of the cap is required pursuant to an Operation and Maintenance Plan incorporated into the Operation and Maintenance Agreement between the City of Santa Clara and the Department dated _____, 2000.

1.03. As detailed in the Removal Action Work Plan approved by the Department on January 23, 1998, a portion of the soils contain hazardous substances, as defined in H&SC section 25316, which include PAHs detected at concentrations exceeding residential Preliminary Remedial Goal levels. Groundwater at the Property is found approximately 30 feet below ground surface. Groundwater sampling analytical results show no contamination. Based on the current condition, the Department concluded that the use of the Capped Portion as a residence, hospital, school for persons under the age of 21 or day care center would entail an unacceptable risk. The Department further concluded that the Capped Portion, as remediated, and subject to the restrictions of this Covenant, does not present an unacceptable threat to human safety or the environment.

ARTICLE II DEFINITIONS

2.01. Department. "Department" means the California Department of Toxic Substances Control and includes its successor agencies, if any.

2.02. Owner. "Owner" means the Covenantor, its successors in interest, and their successors in interest, including heirs and assigns, who at any time hold title to all or any portion of the Property.

2.03. Occupant. "Occupant" means Owners and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

ARTICLE III GENERAL PROVISIONS

3.01. Restrictions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Restriction : (a) runs with the land pursuant to H&SC section 25355.5 (a) (1)(c) and Civil Code section 1471; (b) inures to the benefit of and passes with each and every portion of the Property, (c) is for the benefit of, and is enforceable by the Department, and (d) is imposed upon the specific portion of the property defined as the "Capped Portion" in Paragraph 1.01, above.

3.02. Binding upon Owners/Occupants. Pursuant to H&SC section 25355.5(a) (1)(c) this Covenant binds all owners of the Property, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees. Pursuant to Civil Code section 1471 (b) , all successive owners of the Property are expressly bound hereby for the benefit of the Department.

3.03. Written Notice of Release of Hazardous Substances. Prior to the sale, lease or sublease of the Property, the owner, lessor, or sublessor shall give the buyer, lessees, or sublessee notice that hazardous substances are located on or beneath the Property, as required by H&SC section 25359.7.

3.04. Incorporation into Deeds and Leases. The Restrictions set forth herein shall be incorporated by reference in each and all deeds and leases for any portion of the Property.

3.05. Conveyance of Property. Covenantor agrees that the Owner shall provide notice to the Department not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding mortgages, liens, and other non-possessory encumbrances). The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect proposed conveyance, except as otherwise provided by law, by administrative order, or by a specific provision of this Covenant.

ARTICLE IV RESTRICTIONS

4.01. Prohibited Uses. The Property shall not be used for any of the following purposes:

- (a) A residence, including any mobile home or factory built housing, constructed or installed for use as residential human habitation.
- (b) A hospital for humans.
- (c) A public or private school for persons under 21 years of age.
- (d) A day care center for children.

4.02. Soil Management.

- (a) No activities that will disturb the soil (e.g., excavation, grading, removal, trenching, filling, earth movement or mining) shall be allowed on the Capped Portion of the property without a Soil Management Plan and a Health and Safety Plan approved by the Department.
- (b) Any contaminated soils brought to the surface by grading, excavation, trenching or backfilling shall be managed in accordance with all applicable provisions of state and federal law.
- (c) The Owner shall provide the Department written notice at least fourteen (14) days prior to any building, filling, grading, mining or excavating in the Property.

4.03. Non-Interference with Cap

Covenantor agrees:

- (a) Activities that may disturb the cap (e.g. excavation, grading, removal, trenching, filling, earth movement, or mining) beyond maintenance work on the asphalt pavement, shall not be permitted on the Capped Portion without prior review and written approval by the Department.
- (b) All uses and development of the Capped Portion shall preserve the integrity of the cap.

- (c) The integrity of the Cap shall not be altered without written approval by the Department.
- (d) Covenantor shall provide notice to the Department of each of the following: (i) The type, cause, location and date of any disturbance to the cap that could affect the ability of the cap to contain subsurface hazardous wastes or hazardous materials in the Capped Portion, and (ii) the type and date of repair of such disturbance. Notice to the Department shall be made as provided below in Section 7.04 within ten (10) working days of both the discovery of any such disturbance and the completion of any repairs. Timely and accurate notification by any Owner or Occupant shall satisfy this requirement on behalf of all other Owners and Occupants.

4.04. Access for Department. The Department shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with the purposes of this Covenant as deemed necessary by the Department in order to protect the public health and safety.

4.05. Access for Implementing O&M. The entity or person responsible for implementing the Operation and Maintenance Agreement, shall have reasonable right of entry and access to the Property for the purpose of implementing the Operation and Maintenance Activities until the Department determines that no further Operation and Maintenance is required.

ARTICLE V ENFORCEMENT

5.01 Enforcement. Failure of the Covenantor or Owner to comply with any of the Restrictions specifically applicable to it shall be grounds for the Department to require that the Covenantor or Owner modify or remove any improvements. "Improvements" herein shall mean all buildings, roads, driveways, and paved parking areas, constructed or placed upon any portion of the Property in violation of the Restrictions. Violation of this Covenant shall be grounds for the Department to file civil or criminal actions as provided by law.

ARTICLE VI VARIANCE, TERMINATION, AND TERM

6.01. Variance. Covenantor, or any other aggrieved person, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with H&SC section 25233.

6.02. Termination. Covenantor, or any other aggrieved person, may apply to the Department for a termination of the Restrictions or other terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with H&SC section 25234.

6.03. Term. Unless ended in accordance with the Termination paragraph above, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII MISCELLANEOUS

7.01. No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof to the general public or anyone else for any purpose whatsoever.

7.02. Department References. All references to the Department include successor agencies/departments or other successor entity.

7.03. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Santa Clara within sixty (60) days of the Covenantor's receipt of a fully executed original.

7.04. Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be deemed effective: (1) When delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (2) ten (10) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner: City of Santa Clara
 1500 Warburton Avenue
 Santa Clara, California 95050
 Attention: Bruce Augason, Director of Public Works/City Engineer

To Department: Department of Toxic Substances Control
 700 Heinz Avenue, Suite 200
 Berkeley, CA 94710
 Attention: Barbara J. Cook, P.E., Chief
 Northern Coastal Cleanup Operations Branch

Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.

7.05 Party Invalidity. If any portion of the Restrictions or other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

IN WITNESS WHEREOF, the Parties execute this Covenant.

"Department"

Date: 9-18-2000

By: Baiba J. Corl

"Covenantor"

Date: 8-22-00

By: Jennifer Sparacino
Jennifer Sparacino - City Manager

Approved as to form:

Gary M. Baum
Gary Baum - Assistant City Attorney

ATTEST:

Q. E. Bocan
City Clerk

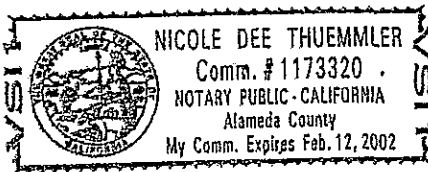
ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Alameda } ss.

On September 18 2000 before me, Nicole Dee Thuemmler
(DATE) (NOTARY)
personally appeared Barbara J. Cook
SIGNER(S)

☐ personally known to me - OR - ☒ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Nicole Dee Thuemmler
NOTARY'S SIGNATURE

OPTIONAL INFORMATION

The information below is not required by law. However, it could prevent fraudulent attachment of this acknowledgment to an unauthorized document.

CAPACITY CLAIMED BY SIGNER (PRINCIPAL)

☒ INDIVIDUAL
☐ CORPORATE OFFICER

TITLE(S)

☐ PARTNER(S)
☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER: _____

DESCRIPTION OF ATTACHED DOCUMENT

Covenant to Restrict Use of Property
TITLE OR TYPE OF DOCUMENT

(07)
Seven
NUMBER OF PAGES

9/18/00
DATE OF DOCUMENT

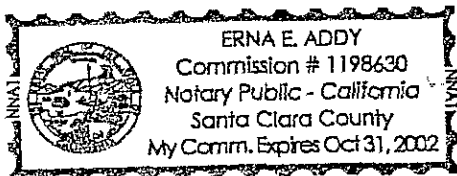
SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

OTHER

California All-Purpose Acknowledgment

STATE OF CALIFORNIA)
) ss
COUNTY OF SANTA CLARA)

On August 30, 2000, before me, ERNA E. ADDY, a Notary Public in and for said County and State, personally appeared Jennifer Sparacino personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.



WITNESS my hand and official seal.

Erna E. Addy
NOTARY PUBLIC, STATE OF CALIFORNIA

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED BELOW:
Covenant To Restrict Use of Property (Environmental Restriction) APN 230-06-052 (1999-2000) between City of Santa Clara and the Department of Toxic Substances Control dated August 22, 2000



THE CITY OF SANTA CLARA CALIFORNIA

OFFICE OF THE
CITY CLERK/CITY AUDITOR
www.ci.santa-clara.ca.us

CITY HALL
1500 WARBURTON AVE.
SANTA CLARA, CA 95050
(408) 615-2220
FAX (408) 241-6771

EXTRACT OF CITY COUNCIL MINUTES OF THE CITY OF SANTA CLARA FOR MEETING HELD ON AUGUST 22, 2000

....."MOTION was made by Gillmor, seconded and unanimously carried (Nadler absent), that, per the Director of Public Works/City Engineer (8/15/00), the Council approve and authorize the City Manager to execute a Covenant to Restrict Use of Property - Environmental Restriction and an Agreement for Operation and Maintenance with the State Department of Toxic Substances Control for the new Police Station site at 601 El Camino Real.".....

I, the undersigned City Clerk of the City of Santa Clara, do hereby certify that the above and foregoing is a true and correct copy of an Excerpt of the Minutes of a meeting of the City Council of the City of Santa Clara, held on

August 22, 2000,
J. E. Boccynn
City Clerk

Approximate location of first
lampblack-impacted soil consolidation area
"CAPPED PORTION"

Exclusion zone

Contamination reduction zone

Project base

Support zone



STEEL JUMP
FENCES

COMPACT

BACKDOOR EXIT -
RELIEF CUE

PARKING LOT

RAIL ISLAND

STORAGE

RAIL TRUCK

Subsurface wood pile

Rectangular concrete structure

POLICE BUILDING

Concrete structure

Approximate location of second
lampblack-impacted soil consolidation area
"CAPPED PORTION"

Temporary stockpile location
of lead-impacted soil

El Camino Real

Soil berm

Approximate boundary of
lampblack-impacted soil

Outlet hose to storm drain
21,000-gallon water storage tank

2,400-gallon water storage tank

0 60
Scale feet

LEGEND

Approximate location of air monitoring station

Approximate area of lampblack-impacted soil (before relocation)

SITE PLAN/WORK AREAS
SANTA CLARA POLICE HEADQUARTERS
Santa Clara, California

LOWNEY ASSOCIATES

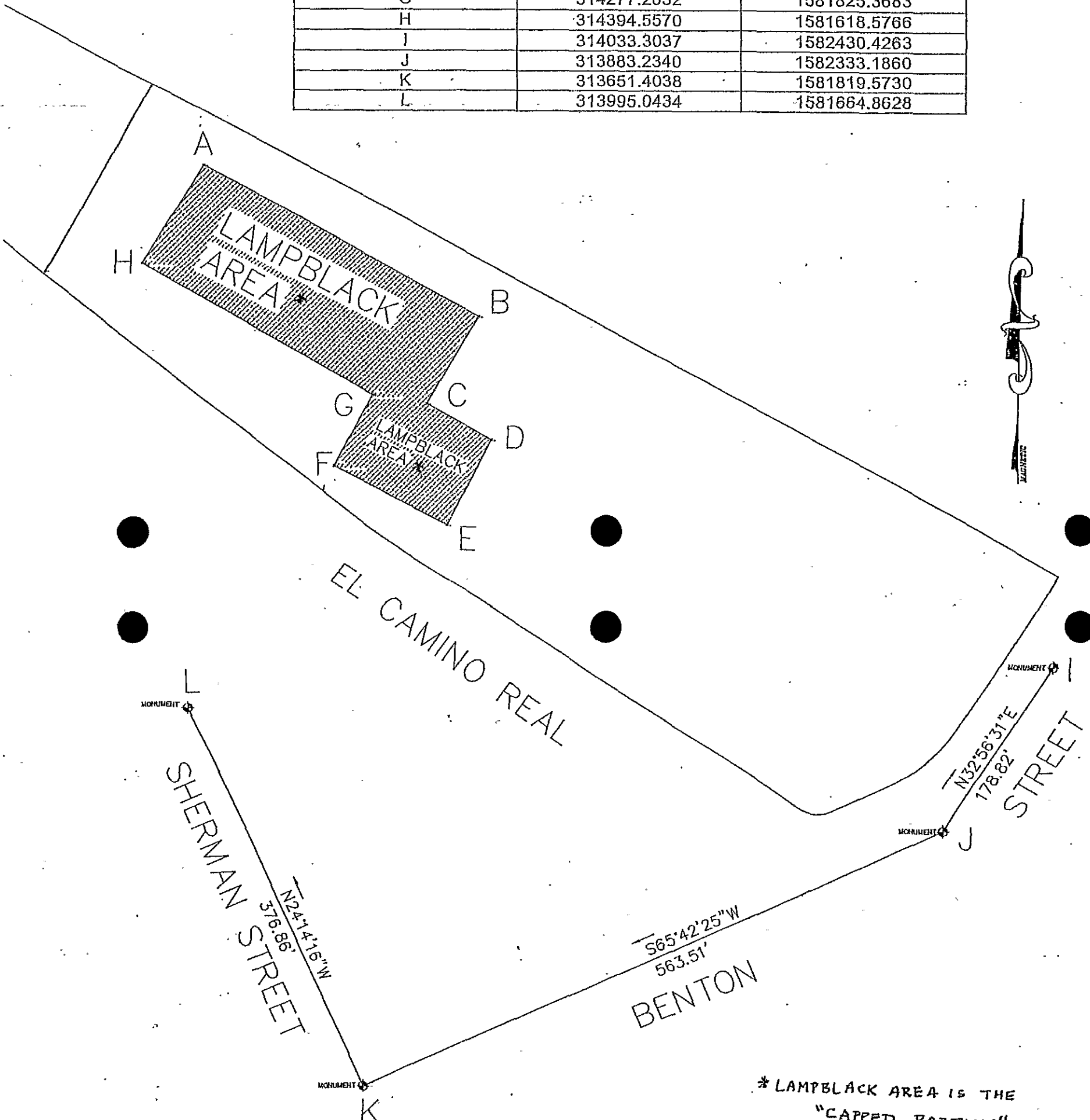
Environmental/Geotechnical/Engineering Services

FIGURE 2

101-912

Exhibit A

POINTS TABLE		
POINT	NORTHING	EASTING
A	314481.5975	1581672.1507
B	314346.7158	1581918.5097
C	314269.5400	1581873.9805
D	314236.2592	1581931.7525
E	314159.6734	1581892.8367
F	314212.7066	1581791.2668
G	314277.2632	1581825.3683
H	314394.5570	1581618.5766
I	314033.3037	1582430.4263
J	313883.2340	1582333.1860
K	313651.4038	1581819.5730
L	313995.0434	1581664.8628



NOTES:

SCALE: 1" = 100'

BASIS OF ELEVATION: BM K4 1995 DATUM, ELEV. = 66.29'

LAMPBLACK AREA: BOTTOM ELEVATION = 54.0' AND TOP ELEVATION = 60.2'

Exhibit "B"